

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 18651-AG19-0925-136

IN THE MATTER OF:)

Kiely Marie Burkhardt)
1003 Breton Lane,)
Ft. Wayne, IN 46845)

Applicant.)

License Application #: 732895)

Type of Agency Action: Enforcement)

FILED

JUL 30 2020

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On June 24, 2020, the Administrative Law Judge, Reuben B. Hill, filed his Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter.

1. The Department served Findings of Fact, Conclusions of law, and Recommended Order on Respondent by mailing the same to her address of record.

2. The Department has complied with the notice requirements of Ind. Code §4-21.5-3-17.

3. Neither party has filed an objection with the Commissioner regarding the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Order, and more than eighteen (18) days have elapsed.

Therefore, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order and issues the following Final Order:

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. Denial of Applicant's resident producer license under license application number 732895 is AFFIRMED.

Under Ind. Code §4-21.5-5-5, Respondent has the right to appeal this Final Order by filing a petition for Judicial review in the appropriate court within thirty (30) days.

ALL OF WHICH IS ORDERED by the Commissioner this 30 day of July, 2020.

A handwritten signature in black ink, appearing to read "Stephen W. Robertson", is written over a horizontal line.

Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Copies to:

Kiely Marie Burkhart
1003 Breton Lane,
Ft. Wayne, IN 46845

Victoria Hastings, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204

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FEB 21 2020

STATE OF INDIANA
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**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

Administrative Law Judge ("ALJ") Reuben Hill, having considered and reviewed all of the evidence, will now render a decision in the matter of Kiely Marie Burkhart ("Applicant"). This matter came to be heard by the ALJ on January 22, 2020, at 11:00 a.m. at the Indiana Department of Insurance, 311 West Washington Street, Indianapolis, Indiana.

The Enforcement Division of the Indiana Department of Insurance ("Department") was represented by counsel, Victoria Hastings. Applicant appeared in person and without counsel. Testimony was heard, and exhibits were received into evidence.

Based upon the evidence presented at said hearing, the ALJ now makes the following Findings of Fact, Conclusions of Law, and issues his Recommended Order.

FINDINGS OF FACT

1. Applicant submitted her application for resident producer licensure on September 3, 2019. (Department's Exhibit 1)

2. Applicant answered “no” to the application question that asks “have you ever been involved in an administrative proceeding?” (Department’s Exhibit 1)

3. The Commissioner entered his Preliminary Administrative Order and Notice of License Denial on November 15, 2019, denying Applicant’s application for licensure, due to Applicant’s failure to disclose an administrative action.

4. On or around December 21, 2018, the Department filed a prior Preliminary Administrative Order and Notice of License Denial, denying Applicant’s November 21, 2018, application for licensure due to her criminal history at the time. (Department’s Exhibit 2)

5. Applicant failed to disclose her December 21, 2018 denial to the Department on her September 3, 2019 application for resident producer licensure. (Hearing Transcript, p. 28)

6. Applicant testified that she answered “no” on the application that asks if she had been involved in an administrative proceeding. (Hearing Transcript, p. 13)

7. Applicant testified that she applied for a resident producer license in 2018 and was denied licensure. (Hearing Transcript, p. 9, 15)

8. Applicant testified she was confused by the question on the application regarding prior administrative actions. (Hearing Transcript, p. 9)

9. Applicant testified that she personally submitted the application herself. (Hearing Transcript, p. 13)

10. Applicant testified that she read the attestation clause on the application. (Hearing Transcript, p. 13-14)

11. The attestation clause states, “I hereby certify that under the penalty of perjury all of the information submitted in this application and attachments is true and complete. I’m aware that submitting false information or omitting pertinent or material information in

connection with this application is grounds for revocation or denial of the license and may subject me to civil or criminal penalties.” (Hearing Transcript, p. 14)

12. Applicant testified that she was aware that if she failed to disclose the prior 2018 denial, it would be grounds for a license denial based on the attestation clause. (Hearing Transcript, p. 14)

13. Applicant admitted three (3) exhibits at the hearing. Applicant’s Exhibit A was a recommendation letter from Jeoff Dingeldein. Applicant’s Exhibit B was a certificate of completion of agent pre-licensing education course. Applicant’s Exhibit C was a Verified Petition for Expungement.

14. The Department admitted two (2) exhibits at the hearing. The Department’s Exhibit 1 was Applicant’s Indiana resident producer application from the National Insurance Producer Registry, dated September 3, 2019. The Department’s Exhibit 2 was a Preliminary Administrative Order and Notice of License Denial, filed December 21, 2018.

15. Conclusions of Law that can be adopted as Findings of Fact are hereby incorporated herein as such.

CONCLUSIONS OF LAW

1. The Commissioner of the Indiana Department of Insurance (“Commissioner”) has jurisdiction over both the subject matter and the parties to this action.

2. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code.

3. Indiana Code § 27-1-15.6-12(b) states that the Commissioner may deny to issue an insurance producer license, due to a number of factors.

4. Indiana Code § 27-1-15.6-12(b)(1) allows the Commissioner to deny an insurance producer's license for providing incorrect, misleading, incomplete, or materially untrue information in a license application.

5. Applicant submitted an application for resident producer licensure on September 3, 2019, wherein applicant failed to disclose her prior administrative action consisting of a resident producer license denial issued on December 21, 2018 from the Indiana Department of Insurance.

6. Indiana Code § 4-21.5-3-14(c) states that the person requesting an agency take action has the burden of persuasion and the burden of going forward. Here, Applicant is requesting that the Department issue her a resident producer license and, therefore, bears the burden.

7. Pursuant to Indiana Code § 27-1-15.6-12(d), a hearing was held to determine the reasonableness of the Commissioner's decision. Applicant failed to meet her burden of proving the Commissioner's decision was unreasonable.

8. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated herein as such.

RECOMMENDED ORDER

With the Findings of Fact and the Conclusions of Law as stated, the Administrative Law Judge now recommends to the Commissioner the following:

1. The denial of the Applicant's resident producer license under license application number 732895 shall be AFFIRMED.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the
Commissioner this _____ day of _____, 2020.

Reuben Hill
Administrative Law Judge

Distribution:

Kiely Marie Burkhardt
1003 Breton Lane,
Ft. Wayne, IN 46845

Victoria Hastings, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204

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NOV 15 2019

STATE OF INDIANA
DEPT. OF INSURANCE

PRELIMINARY ADMINISTRATIVE ORDER
AND NOTICE OF LICENSE DENIAL

The Indiana Department of Insurance (“Department”), pursuant to the Indiana Administrative Orders and Procedures Act, Indiana Code § 4-21.5-1 *et seq.* and Indiana Code § 27-1-15.6-12, hereby gives notice to Kiely Marie Burkhart (“Applicant”) of the following Administrative Order:

1. Applicant submitted an application for resident producer licensure with the Commissioner of the Indiana Department of Insurance (“Commissioner”) on September 3, 2019.
2. Before approving an application, the Commissioner must find that the applicant has met specific requirements under Indiana Code § 27-1-15.6-6 and Indiana Code § 27-1-15.6-12.
3. Indiana Code § 27-1-15.6-12(b)(1) provides, in part, that the Commissioner may refuse to issue an insurance producer license for providing incorrect, misleading, incomplete, or materially untrue information in a license application.
4. Following a review of public records and the materials submitted by Applicant in support of her application, the Commissioner being fully advised, now hereby notifies Applicant

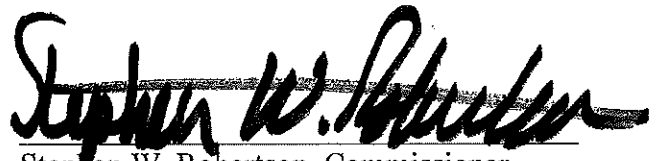
that she has not fully met the requirements of licensure as stated by Indiana Code § 27-1-15.6-12(b)(1) due to Applicant's failure to disclose an administrative action, for a license denial from the Indiana Department of Insurance from December 21, 2018.

5. Indiana Code § 27-1-15.6-12(d) provides that the applicant may, not more than sixty-three (63) days after notice of denial of the applicant's application is mailed, make written demand to the Commissioner for a hearing before the Commissioner to determine the reasonableness of the Commissioner's action.

IT IS THEREFORE ORDERED that Applicant's request for licensure is hereby DENIED pursuant to Indiana Code § 27-1-15.6-12(b)(1), due to her failure to disclose an administrative action on her application. Applicant may reapply for licensure not less than one (1) year from the date of this order.

11-15-2019

Date Signed



Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Distribution to:

Kiely Marie Burkhart
1003 Breton Lane
Ft. Wayne, IN 46845

Victoria Hastings, Attorney
ATTN: Phil Holleman, Sr. Investigator
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